

**Chapter Eight**  
**Eighth Annual Activity Report of the**  
**African Commission**  
**1994 - 1995**

## **I - ORGANIZATION OF WORK**

### **A - Period Covered by the Report**

1. The Seventh Annual Activity Report of the African Commission on Human and Peoples' Rights was adopted by the 30th Ordinary Session of the Assembly of Heads of State and Government of the OAU in its Resolution AHG/Res. (XXX).

The present report covers the 16th and 17th ordinary sessions held in Banjul, the Gambia, from 25 October - 3 November 1994 and in Lomé, Togo, from 13 - 22 March 1995 respectively.

### **B - Status of ratification**

2. By the 17th Session of the Commission, all the members of the OAU, with the exception of Eritrea, Ethiopia, South Africa and Swaziland, had ratified or acceded to the African Charter on Human and Peoples' Rights. The list of States and dates of signature, ratification/accession and deposit of instruments is attached to this Volume as Appendix III.

### **C - Sessions and Agenda**

3. The Commission held two Ordinary Sessions since the adoption of its 7th Annual Activity Report.

- The 16th Ordinary Session held in Banjul, The Gambia, 23 October - 4 November 1994

- The 17th Ordinary Sessions held in Lomé, Togo 13 - 22 March 1995

- The Agenda for each of the two sessions is contained in Annexes I and II of this Report.

The situation of Prisons in Africa and the report of the African Mission on the Evaluation of the UN Embargo imposed on Libya were proposed by Penal Reform International and *Ligue Camerounaise des Droits de la Personne* respectively in accordance with Article 6 (5) (a) of the Rules of procedure of the Commission.

**D. Composition and participation**

4. The following Commissioners attended the 16th Session :

1. Prof. Isaac NGUEMA, Chairman,
2. Dr Mohammed H. Ben Salem , Vice Chairman,
3. Prof. Emanuel V.O. DANKWA,
4. Mr Sourahata B. Semega Janneh,
5. Mr Robert H. Kisanga,
6. Dr Vera V.B.S. DUARTE-MARTINS,
7. Dr Ibrahim A. BADAWI El-Sheikh,
8. Prof. U. Oji UMOZURIKE

Messrs ALIOUNE BLONDIN Beye, Atsu Koffi AMEGA and Youssoupha NDIAYE apologised for their inability to attend the 16th Session.

5. The representatives of the following States attending the session: Benin, Burundi, Cape Verde, Côte d'Ivoire, The Gambia, Swaziland and Togo.

6. The following Commissioners attended the 17th Session :

1. Prof. Isaac NGUEMA, Chairman,
2. Dr Mohammed H. Ben Salem , Vice Chairman,
3. Prof. Emanuel V.O. DANKWA,
4. Mr Sourahata B.S. Janneh,
5. Mr Robert H. Kisanga,
6. Dr Vera V.B.S. DUARTE-MARTINS,
7. Dr Ibrahim A. BADAWI El-Sheikh,
8. Prof. U. Oji UMOZURIKE
9. Mr Atsu Koffi AMEGA

Messrs ALIOUNE BLONDIN Beye and Youssoupha NDIAYE apologised for their inability to attend the 17th Session.

7. Many NGOs attended the 17th Session as well as observers States.

8. The following States were present - Algeria, Botswana, Burkina-Faso, Burundi, Central African Republic and Mali.

**E. Adoption of the 8th Annual Activity Report**

9. On 22 March 1995, the Commission considered and adopted the 8th Annual Activity Report.

## **II - ACTIVITIES OF THE COMMISSION**

### **A. Consideration of Periodic Reports**

10. Under Article 62, each State had undertaken to submit a report every two years, on the legislative and other measures it is taking to give effect to the rights and freedoms guaranteed by the Charter.

The initial reports of Benin and Cape Verde as well as the second periodic report of The Gambia were presented by the representatives of the States respectively at the 16th Session. They were discussed and the issues and questions raised by the Commission were addressed. The Commission acknowledged the preparedness of the States concerned to co-operate with the Commission and expressed its appreciation for The Gambia's second report.

11. The reports of Mauritius, Mozambique and Seychelles were scheduled for discussion at the 17th session but there were no State representatives to present them. The States were accordingly requested to send representatives at the next session.
12. By the 17th session the following States had submitted their reports: Libya, Rwanda, Tunisia (9th Session), Egypt and Tanzania (11th session), The Gambia, (12th and 16th sessions), Senegal and Zimbabwe (12th session), Togo and Nigeria (13th session), Benin, Ghana, Cape Verde and Mozambique (14th session), Mauritius and Seychelles (17th session). 34 States are yet to submit their reports.

### **B - Promotional activities**

#### **i) Report of the Chairman**

13. The Chairman's Activity Report covered his attendance at various symposia and seminars, his work in connection with the Commission's publications, especially with regard to the third volume of the Review of the African Commission on Human and People's Rights. He also reported on the mission to Togo which he conducted with the Vice-Chairman.

During the 17th Session, the Chairman, Isaac Nguema, the Vice-Chairman, Mohammed H Ben Salem, Commissioner SSB Semega JANNEH and the Secretary to the Commission, Mr. Germain Baricako were received in audience by the President of Togo, His Excellency Mr. Gnassingbe Eyadima.

The discussion focused mainly on the global issues of democratisation process and human rights in Togo, and particularly on the application of the recently promulgated amnesty law, the organisation of by-elections and the establishment of constitutional institutions.

The three issues were contained in a document that had earlier on been presented to the Commission by a delegate of the Action Commission for Renewal of Togo (CAR).

The Commission took note of the document and promised to discuss it with the President of the Republic if the latter accepted its mediation.

President Eyadema assured the Commission's delegation of his determination to foster national reconciliation, encourage direct and sincere dialogue with all segments of the socio-political spectrum and to ensure that the democratic process is conducted in accordance with the aspirations and in the best interest of the Togolese people. Moreover, the President of the Republic highlighted a number of actions already carried out and others to be undertaken in this respect.

The Presidential delegation also indicated that the document given to the Commission by CAR was not genuine and promised the Commission with the authentic document which was done. The Commission's delegation expressed satisfaction at the efforts deployed by the Togolese President and the Government to enhance the normalisation of the socio-political situation in Togo and encourage the latter to persevere in this direction.

The Commission's delegation informed the Action Committee for Renewal (CAR) of the outcome of the audience with the President of the Republic. The CAR was requested to await the report of the national body charged with dealing with these contentious issues and the position of the President on the report.

## **ii) Activities of other Members of the Commission**

14. During the inter-session period, other Commissioners also attended Conferences, Symposia and Seminar in and outside the continent and were involved in other promotional activities. The allocation of African countries for promotional activities is attached as (Annex III).

## **15. iii) Conferences, Symposia and Seminars organised by or in-collaboration with the Commission.**

a) Seminar on Human Rights Education in South Africa organised in collaboration with the South African Lawyers Committee for Human Rights, September 24-27, Durban, South Africa.

b) Seminar on the African Woman and the African Charter on Human and Peoples' Rights, Lomé, Togo, 8-9 March 1995, organised in collaboration with WILDAF. This seminar was organised through the financial assistance of the United Nations Centre for Human Rights

c) Seminar on the Participation of NGOs in the work of the African Commission on Human and Peoples' Rights, Lomé, Togo 10-12 March 1995, organised in collaboration with the International Commission of Jurists and the Association for the Promotion of the Rule of Law (APED) based in Togo.

## **iv) Forthcoming seminars and conferences.**

16. The Commission decided to organise the following seminars/conferences:

1. Legal Assistance and Fair Trial;
2. Popular participation and Non-formal Education;
3. Human Rights in the New South Africa;
4. Contemporary Forms of Slavery in Africa;
5. The Peaceful Resolution of Ethnic and Social Conflicts from a Human Rights Perspective;
6. The Right to Education: Essential Condition for Development in Africa;
7. Economic, Social and Cultural Rights and the Right to Development;
8. Conditions of Prisons in Africa;
9. The problem of Impunity in Africa;

The Commission decided to seek the support of international organisations and NGOs for the seminars/conferences and appointed Commissioners to be responsible for them.

#### **iv - Report of the Special Rapporteur on Extra-judicial Executions in Africa**

17. At the 16<sup>th</sup> Ordinary Session, Dr. Mohammed Hatem Ben Salem, Special Rapporteur on extra-judicial, summary and arbitrary executions briefed the Commission on the outcome of his reflection on the terms of reference and methods of work.

18. In the light of the information provided, the Commission decided that, on account of the work already done by the United Nations System of the issue, the Special Rapporteur of the Commission should avoid duplication and concentrate on the aspects of the problem of, *viz.*

- a) compensation of families of victims of such executions
- b) responsibility of instigators and authors of such executions

19. The Commission also considered the issue of the terms of reference of the Special Rapporteur and decided to study the matter thoroughly and finalise it at its next session.

20. At the 17<sup>th</sup> session, the Special Rapporteur presented a preliminary document to the Commission containing proposals on:

- a) the scope of his mission;
- b) the area of investigation;
- c) the duration of his mission
- d) the method of work
- e) the presentation of reports
- f) the budget estimates for 1995 and 1996

21. The Commission approved these proposals as well as the draft terms of reference submitted to it for consideration.

#### **v. Publications**

22. The Chairman, Professor Isaac Nguema is charged with the supervision of the publication of the Review of the African Commission on Human and Peoples' Rights. The third edition of the Review was published in October 1994. Work on the fourth edition is in progress. This

Review is published through the financial assistance of Raoul Wallenberg Institute and the African Society of International and Comparative Law.

23. The Vice- Chairman, Dr. Mohammed Hatem Ben Salem reported on the plans for the publication of the Commission's Newsletter.

**vi. Forthcoming Missions**

24. The Commission decided to send missions to Nigeria, Sudan, Mauritania, Senegal, Algeria and Zaire. The Government of Algeria invited the Commission to visit while the Government of Sudan responded favourably to the Commission request to visit.

**vii. Relations with Observers**

25. During the two sessions the Commission granted observer status to 23 NGOs, bringing the number of organisations that enjoy observer status with the Commission to 154.

**C. Protective Activities**

26. The Commission received 6 new communications during the two sessions and concluded work on 23 communications. The list of concluded communications and the decisions/ recommendations are attached hereto as Annex IV.

**III. ADMINISTRATIVE AND FINANCIAL MATTERS**

**A. Administrative Matters**

**i) Personnel needs**

27. At the 16<sup>th</sup> and 17<sup>th</sup> Ordinary sessions, the Commission looked into the inadequate staffing situation of its Secretariat.

It noted that in spite of the volume and importance of the work assigned to the Secretariat, the latter is staffed by only one professional officer, who is the Secretary to the Commission. The Legal Officer in-charge of matters relating to the protection of human and peoples' rights left the organisation in August 1993 and is yet to be replaced.

The officer who was to be in-charge of promotional matters was never recruited in spite of persistent demands by the Commission.

The Commission set up a documentation centre in 1992 through assistance from the United Nations Centre for Human Rights which agreed *inter alia* to take care of the salary of the documentalist pending the OAU take-over. The contract of this documentalist which has been renewed twice, expired on 30 April 1995.

As the OAU has still not appointed an officer to take care of the centre, the Secretariat is compelled to close it down in spite of its capital importance to the Commission.

The Commission has decided to make another appeal to the OAU General Secretariat for an urgent resolution of this matter.

## **ii) Equipment needs**

28. The volume and nature of the work of the Secretariat of the Commission call for the use of computers. The collection and management of data relating to human rights, promotional and protective activities cannot be effectively carried out within the required periods with the Secretariat's present logistics which is outdated.

The Secretariat therefore needs at least three (3) computers. The Commission has decided to take up this matter with the OAU General Secretariat.

## **(iii) Medical cover and insurance**

29. The Commission once again looked into the issue of medical cover for commissioners during sessions. The commissioners are of the view that medical expenses incurred during the sessions or official missions should be borne by the OAU.

Moreover, the commissioners are required to undertake missions on behalf of the Commission which may expose them to certain risks. This is why they have requested that they be provided with an insurance cover for the duration of their missions.

These issues were raised at the 13<sup>th</sup> ordinary session and a formal request made to the OAU General Secretariat which promised that the matter would be promptly addressed.

At its 17<sup>th</sup> session, the Commission felt that there was an urgent need to take up the matter again with the Secretary-General of the OAU, given the climate of insecurity prevailing in several countries that the commissioners have to visit on official assignments for the Commission.

## **B. Financial matters**

30. At its 16<sup>th</sup> and 17<sup>th</sup> ordinary sessions, the Commission could not consider all the items on its agenda due to the fact that the duration of the sessions was reduced from 15 to 10 days for budgetary reasons.

The Commission therefore decided to appeal to the Secretary General of the OAU requesting him to take into account this serious handicap and restore the duration of sessions to fifteen days.

The Commission also noted the fact that the same budgetary constraints forced members of the Commission to give up the idea of organising promotional activities, such as seminars, visits, etc. in State parties. In this respect, the Commission renewed its appeal to the OAU Secretary General requesting him to contemplate the possibility of providing it with the necessary financial resources for the fulfilment of its mandate in accordance with the provisions of the Charter.

## **i) The OAU Budget**

31. The budget allocated by the OAU to the Commission for the period 1994 to 1996 biennium is as follows:



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Code	Description	Appropriations 1993/94	Actual Expenditure 1990/93 (3yrs Average)	APPROPRIATION 1994/96			Increase (Decrease) (5b-4)	Page Increase (6/4)
				(a) Grand Total	(b) 1994/95	© 1995/96		
100	Basic Salary	101,771.00	80,563.00	199,248.00	98,429.00	100,819.00	17,866.00	22.18
101	Post Adjustment Allowance	21,182.00	25,282.00	45,303.00	22,406.00	22,897.00	2,876.00	11.38
102	Temporary Assistance	1,500.00	1,263.00	3,000.00	1,500.00	1,500.00	237.00	18.76
103	Overtime payment	250.00	301.00	500.00	250.00	250.00	51.00	16.94
104	Commission's Honorarium	33,000.00	19,633.00	66,000.00	33,000.00	33,000.00	13,367.00	68.08
204-212	Common staff costs	97,098.00	69,405.00	186,794.00	104,630.00	82,164.00	35,225.00	50.75
300	Official Missions	20,000.00	22,739.00	30,000.00	15,000.00	15,000.00	7,739.00	34.03
401-406	Maintenance costs	16,500.00	10,833.00	33,000.00	16,500.00	16,500.00	5,667.00	52.31
501-504	Communication costs	6,500.00	4,309.00	13,000.00	6,500.00	6,500.00	2,191.00	50.85
600-610	Supplies and services	16,000.00	21,243.00	32,000.00	16,000.00	16,000.00	5,243.00	24.68
800	Meetings	135,000.00	194,177.00	360,000.00	180,000.00	18,000.00	14,177.00	7.30
900	Research and Joint Projects	0.00	0.00	32,000.00	17,000.00	15,000.00	17,000.00	0.00
	<b>TOTAL</b>	<b>430,801.00</b>	<b>449,748.00</b>	<b>1,000,485.00</b>	<b>511,215.00</b>	<b>489,630.00</b>	<b>61,467.000</b>	<b>13.67</b>

**ii) Subventions from the United Nations Centre for Human Rights**

32. The Commission received on 30 August 1994, the second round tranche of 36,000 dollars as part of the 71,300 dollars subvention provided by letter of 22 July 1993 for the following activities:

- a) Strengthening the documentation centre
  - 1. Library
  - 2. Printing of the Charter
- b) Seminars
- c) Support staff

33. The United Nations Centre also allocated an additional sum of 42, 000 dollars for the Organisation of the Seminar on the Rights of the African Woman and the African Charter on Human and Peoples' Rights which was held in Lomé, Togo on 8 and 9 March 1995.

34. The same Centre is currently studying a project proposal submitted to it by the Commission for the computerisation of the Secretariat and the strengthening of promotional and protective activities.

**iii) Subventions from the Raoul Wallenberg Institute**

35. The Raoul Wallenberg Institute continues to provide assistance to the Commission for:

- promotional activities;
- publication of the Commission's Review
- funding of means of communications between the Commission's Secretariat, the commissioners and partners of the Commission.

**IV - Resolutions Adopted at the 16th and 17th Sessions**

36. The Commission adopted the first five resolutions at the 16<sup>th</sup> ordinary session and the other five at the 17<sup>th</sup> session (Annexes V and VI.

- 1. Resolution on the Military
- 2. Resolution on Nigeria
- 3. Resolution on Rwanda
- 4. Resolution on The Gambia
- 5. Resolution on the Human Rights Situation in Africa
- 6. Resolution on Sudan
- 7. Resolution on Nigeria
- 8. Resolution on The Gambia
- 9. Resolution on conditions in the prisons of Africa
- 10. Resolution on Anti-Personnel Mines

**V - Adoption of the Report by the Assembly of Heads of State and Government**

37. Following consideration of this Report, the Assembly of Heads of State and Government adopted a resolution that took note of it and authorised its publication.

## **ANNEXES**

### **ANNEX I**

#### **Sixteenth Ordinary Session of the African Commission on Human and Peoples' Rights**

**25 October - 3 November, 1994**

**Banjul, The Gambia**

1. Opening Ceremony
2. Adoption of the Agenda
3. Organisation of work
4. Observers:
  - a) Consideration of applications for observer status
  - b) Relations with observers and statements of observers
5. Consideration of Periodic reports
  - Initial reports of
    - Benin
    - Cape Verde
    - Mozambique
- Second report of The Gambia
6. Promotional activities
  - a) Activity reports of commissioners (as well as those of the colloquia and seminars)
  - b) Examination of extra-judicial executions
  - c) Establishment of an African Human Rights Court (Resolution AHG/230 (XXX) of the Assembly of Heads of State and Government of the OAU on the creation of an African Human Rights Court).
  - d) Report on regional seminars on the drafting and preparation of periodic reports held in Tunis in May 1994.
  - e) Report on the Seminar on the African Woman and the African Charter on Human and Peoples' Rights
  - f) Dakar Preparatory Regional Conference on Women (November 1994) and the 4<sup>th</sup> World Conference on Women (Beijing 1995)
  - g) Organisation of forthcoming conferences and seminars
  - h) Publication of the Review and Newsletter of the Commission
  - i) Follow up of decisions and recommendations adopted by the World Conference on Human Rights (Vienna and Montreal Conferences)
7. Protective activities
8. Question of the Headquarters of the Commission
9. Administrative and Financial matters
  - a) Report of the Chairman
  - b) Report of the Secretary to the Commission
  - c) Implementation of the Recommendations of the Previous sessions
  - d) Draft Rules on contracts and consultants

- e) Funding for the translation of periodic reports
- f) Situation of the Documentation Centre
- 10. Methods of work of the Commission
  - a) Consideration of amendments to the Rules of Procedure
  - b) Examination of article 58 of the Charter
  - c) Question of interns within the Secretariat of the Commission
- 11. OAU activities relevant to the Commission
- 12. Date, Venue and Agenda of the seventeenth session
- 13. Any other business
- 14. Preparation of :
  - a) Session report
  - b) Final communiqué
- 15. Adoption of the report of the sixteenth session
- 16. Final communiqué and closing ceremony

## **ANNEX II**

### **Seventeenth Ordinary Session of the African Commission on Human and Peoples' Rights**

**13-22 March 1995**

**Lomé, Togo**

1. Opening Ceremony
2. Adoption of the Agenda
3. Organisation of work
4. Adoption of the report of the 16<sup>th</sup> session
5. Observers:
  - a) Consideration of applications for observer status
  - b) Relations with observers and statements of the latter
6. Consideration of Periodic reports of the following member States
  - Mauritius
  - Mozambique
  - Seychelles
7. Promotional activities
  - a) Activity reports of commissioners
  - b) Examination of extra-judicial executions
  - c) Report on the implementation of Resolution AHG/230 (XXX) on the establishment of an African Human Rights Court).
  - d) The situation in the prisons of Africa
  - e) Report on the Seminar on the African Woman and the African Charter on Human and Peoples' Rights
  - f) Dakar Preparatory Regional Conference on Women (November 1994) and the 4<sup>th</sup> World Conference on Women (Beijing 1995)
  - g) Organisation of forthcoming conferences and seminars
  - h) Publication of the Review and Newsletter of the Commission
  - i) Follow up of decisions and recommendations adopted by the World Conference on Human Rights (Vienna and Montreal Conferences)
  - j) Report of the African Mission of the Embargo Evaluation of the UN on Libyan populations - February, 1995 (proposed by the Cameroonian League for Human Rights)
8. Protective activities
9. Question concerning of the Headquarters of the Commission
10. Administrative and Financial matters
  - a) Report of the Chairman of the Commission
  - b) Report of the Secretary to the Commission
  - c) Implementation of the Recommendations of the Previous sessions
  - d) Draft Rules on contracts and consultants
  - e) Financing of the translation of the summaries and periodic reports
  - f) Situation of the Documentation Centre of the Commission

- g) Draft co-operation agreement between the Commission and Interights
- h) Distribution of States Parties between the members of the Commission for promotional activities
- 11. Methods of work of the Commission
  - a) Consideration of amendments to the Rules of Procedure
  - b) Examination of article 58 of the Charter
  - c) Amendments of article 12 of the Rules of Procedure
- 12. OAU activities relevant to the Commission
- 13. Date, Venue and Agenda of the seventeenth session
- 14. Any other business
- 15. Preparation of :
  - a) Session report
  - b) 8<sup>th</sup> Annual Activity Report
  - c) Final communiqué
- 15. Adoption of the report of the seventeenth session and the annual activity report
- 16. Final communiqué and closing ceremony

### **ANNEX III**

#### **DISTRIBUTION OF COUNTRIES TO MEMBERS OF THE COMMISSION FOR PROMOTIONAL WORK**

1. Mr. Atsu-Koffi Amega  
Togo  
Central African Republic  
Burundi  
Chad  
Gabon  
Djibouti
2. Dr. Ibrahim A. Badawi EL Sheikh  
Comoros  
Seychelles  
Mauritius  
Madagascar  
Egypt
3. Mr. Alione Blondin Beye  
Benin  
Equatorial Guinea  
Cote D'Ivoire  
Mauritania
4. Mr. Emmanuel Victor Oware Dankwa  
Ghana  
Zimbabwe  
Malawi
5. Mr. Souharata Baboucar Semega Janneh  
Gambia  
Liberia  
Sierra Leone  
Botswana  
Namibia
6. Mr. Robert H Kisanga  
Ethiopia  
Kenya  
Somalia  
Uganda  
Tanzania  
Zambia
7. Mrs. Vera VDM Duarte Martins



- Cape Verde
- Mozambique
- Angola
- Guinea Bissau
- Sao Tome & Principe
  
- 8. Mr Youssoupha Ndiaye
  - Mali
  - Niger
  - Senegal
  - Republic of Guinea
  
- 9. Prof. Isaac Nguema
  - Zaire
  - Burkina Faso
  - Congo
  - Rwanda
  
- 10. Prof. Mohammed H Ben Salem
  - Tunisia
  - Algeria
  - Libya
  - Sahrawi Arab Democratic Republic
  - Sudan
  - Eritrea
  
- 11. Prof. U Oji Umozurike
  - Nigeria
  - Cameroon
  - Lesotho
  - Swaziland

## **ANNEX IV**

### **Decisions/Recommendations on communications**

#### **8/88 Nziwa Buyingo V. Uganda**

##### **Complaint:**

The author of the communication, Mr. Nziwa Buyingo, citizen of Zaïre, alleges that he was on 28 December 1987, subjected to arrest, arbitrary detention, torture and extraction of money by Ugandan soldiers in Kisoro, Uganda.

He alleges that his rights under Articles 5, 6, 12 and 14 under the African Charter on Human and Peoples' Rights have been violated.

##### **Finding**

The Commission has since 1988 failed to get any response from the complainant on whether or not he has had recourse to local remedies as required by Article 56 (5) of the Charter and Rule 103 (1) (f) of the Rules of Procedure. The Commission accordingly declares the communication inadmissible.

#### **16/88 Comité Culturel pour la Démocratie au Bénin v. Bénin, joined with 17/88 Hilaire Badjogoume v. Bénin and 18/88 El Hadj Boubacare Diawara v. Bénin**

##### **Complaint:**

The communication, No. 16/88, submitted by "Comité Culturel pour la Démocratie au Bénin", alleges serious violations of various articles of the African Charter, committed by the Bénin Government. They refer to the detention of hundreds of citizens without charge or trial, torture, and the murder of a Mr Akpokpo.

The communication requests full and unconditional liberation of all political prisoners. A letter submitted by the Government on 9 May 1994 states that all political prisoners were released after the new Government's took over in 1990.

##### **Finding:**

Notices of hearing was sent to the parties, but only the representative of the Government of Bénin appeared. The Government representative was duly given the opportunity to present his case at the end of which the Commission, after due consideration decided that the present government of Bénin has satisfactorily resolved the issue of violations of human rights under the previous administration. This decision was communicated to the authors the communication. In the absence of a response, the Commission confirms that the issue had been satisfactorily resolved.

**17/88 Hilaire Badjogoume v. Benin, joined with 16/88 and 18/88**

**complaint:**

The communication No. 17/88, was submitted by Mr. Hilaire Badjogoumé. He complained of being arbitrarily detained for two years, from 5 April 1988 to 10 January 1990.

**Decision:**

Notices of hearing was sent to the parties, but only the representative of the Government of Benin appeared. The Government representative was duly given the opportunity to present his case at the end of which the Commission after due consideration decided that the government of Benin has settled the complainant's claim administratively.

This decision was communicated to the complainants and in absence of response the Commission affirms its decision.

**18/88 El Hadj Boubacare Diawara v. Benin, joined with 16/88 and 17/88**

**Complaint:**

The communication No. 18/88, was submitted by Mr El Hadj Boubacar Diawara. He had been detained without charge or trial from 18 February 1982 for a period of more than 7 years. Furthermore, he reports the arbitrary detention of 7 others, one of whom died in prison 11 months after imprisonment. All detainees, he claimed, were tortured while imprisoned.

**Finding:**

Notices of hearing was sent to the parties, but only the representative of the Government of Benin appeared. The Commission decided that since the complainant has referred his complaint to the courts in Benin, where it is now pending, the Commission declared the communication inadmissible for want of exhaustion of local remedies, under Article 56(5) of the Charter and Rules 103(1)(f) of the Rules of Procedure.

**31/89 Maria Baes v. Zaïre**

**Complaint:**

The communication was submitted by a Danish national, Maria Baes, on behalf of her colleague Dr. Shambuyi Naiadia Kandola, of the University of Kinshasha, Zaïre. She alleges that her colleague was detained without charge in April 1988 for purely political reasons in breach of Articles 6 and 7 of the African Charter on Human and Peoples' Rights.

**Finding:**

The author has failed to respond to inquiries from the Commission which learns that the detained person had since been released. The author shows no interest in pursuing the case. The Commission decides to close the file since the author has no interest in proceeding with the case.

**39/90 Annette Pagnoule / Cameroon**

**Complaint:**

This communication was submitted by Anette Pagnoule of Amnesty International and concerns one Abdoulaye Mazou, a Cameroonian national who continues to be held in prison, despite completing, in April 1989, a five-year prison term.

**Decision:**

The Commission decides to close the file because the victim has been released and the issue satisfactorily resolved.

**53/91 Alberto Capita v. Tanzania**

**Complaint:**

Alberto Capita is a businessman and a former citizen of Zaire, presently resident in Angola. He sued the Tanzanian Film Company, a state-owned company, in Zairian court, and won a judgment of \$500,000 on 4 July 1984. The Embassy of Tanzania in Kinshasa was sued simultaneously with the Tanzanian Film Company. As of January, 1985, no appeal in the case had been filed. The Tanzanian Film Company failed to pay the judgment debt. The Tanzanian Film Company has no property in Zaïre; the only property of the Tanzanian State is the Embassy of Tanzania in Kinshasa, which is exempt from seizure under the tradition of diplomatic immunity. The complainant sought the intervention of the Foreign Ministries of Zaïre and Angola where he now resides to no avail.

The complainant argues that he has been deprived of justice and in essence of the right to have his cause heard, since as an individual holding a judgment against a foreign state which refuses to pay, he has no recourse.

**Decision:**

The Commission decided that the case was inadmissible on account of lack of exhaustion of local remedies. The case can be resubmitted when the local remedies have been properly exhausted or if the complainant proves that local remedies are unavailable, ineffective or unreasonably prolonged.

### **59/91 Embga Mekongo Louis v. Cameroon**

#### **Complaint:**

Embga Mekongo, a Camerouian citizen, alleges false imprisonment, miscarriage of justice and damages for which he claims the sum of \$105m.

#### **Finding:**

The Commission finds that the author had been denied due process, contrary to Article 7 of African Charter and had in fact suffered damages. Being unable to determine the amount of damages, the Commission recommends that the quantum should be determined under the law of Cameroon.

### **60/91 Constitutional Rigths Project v. Nigeria, (in respect of Wahab Akamu, G. Adega and others.)**

#### **THE FACTS**

1. Communication 60/91 was brought by the Constitutional Rights Project, a Nigerian NGO, on behalf of Wahab Akamu, Gbolahan Adeaga and others sentenced to death under the Robbery and Firearms (Special provision) Decree No. 5 of 1984. This decree creates special tribunals, composed of one serving or retired judge, one member of the armed forces and one member of the police force. The decree does not provide for any judicial appeal of sentences. Sentences are subject to confirmation or disallowance by the Governor of a State.

2. Wahab Akamu was convicted and sentenced to death on August 12, 1991, and Gbolahan Adeaga was convicted and sentenced on August 14, 1991. Both were sentenced by Robbery and Firearms Tribunal 1, Lagos. The complaint alleges that both were tortured to extract confessions while they were in custody.

#### **ARGUMENT**

3. The communication argues that the prohibition on judicial review of the special tribunals and lack of judicial appeals for judgments of these tribunals violates the right to an appeal to competent national organs against acts violating fundamental rights, guaranteed by Article 7, paragraph 1(a) of the African Charter.

4. The communication also argues that the practice of setting up special tribunals, composed of members of the armed forces and police in addition to judges, violates the right to be tried by an impartial tribunal guaranteed by Article 7, paragraph 1(d).

## **THE LAW**

### **Admissibility**

5. The case was declared admissible at the 14th Session of the Commission on the following grounds:

6. The case raises the question of whether the remedies available are of a nature that requires exhaustion.

7. The Act complained of in Communication No. 60/91 is The Robbery and Firearms (Special Provisions) Act, Chapter 398, in which Section 11, paragraph 4 provides:

"No appeal shall lie from a decision of a tribunal constituted under this Act or from any confirmation or dismissal of such decision by the Governor."

8. The Robbery and Firearms Act entitles the Governor to confirm or disallow the conviction of the Special Tribunal.

This power is to be described as discretionary extraordinary remedy of a non-judicial nature. The object of the remedy is to obtain a favour and not to vindicate a right. It would be improper to insist on the complainants seeking remedies from sources which do not operate impartially and have no obligation to decide according to legal principles. The remedy is neither adequate nor effective.

9. Therefore, the Commission is of the opinion that the remedy available is not of a nature that require exhaustion according to Article 56, paragraph 5 of the African Charter.

### **The merits of the case**

10. The Robbery and Firearms (Special Provisions) Act, Section 11, subsection 4 provides:

"No appeal shall lie from a decision of a tribunal constituted under this Act or from any confirmation or dismissal of such decision by the Governor."

11. A "decision of a tribunal constituted under this Act or..any confirmation or dismissal of such decision by the Governor" may certainly constitute an "act violating fundamental rights" as described in Article 7.1(a) of the Charter. In this case, the fundamental rights in question are those to life and liberty provided for in Articles 4 and 6 of the African Charter. While punishments decreed as the culmination of a carefully conducted criminal procedure do not necessarily constitute violations of these rights, to foreclose any avenue of appeal to "competent national organs" in criminal cases bearing such penalties clearly violates Article 7.1(a) of the African Charter, and increases the risk that severe violations may go unredressed.

12. The Robbery and Firearms (Special Provision) Act, Section 8(1), describes the constitution of the tribunals, which shall consist of three persons; one Judge, one officer of the Army, Navy or Air Force and one officer of the Police Force. Jurisdiction has thus been transferred from the normal courts to a tribunal chiefly composed of persons

belonging to the executive branch of government, the same branch that passed the Robbery and Firearms Decree, whose members do not necessarily possess any legal expertise. Article 7.1(d) of the African Charters requires the court or tribunal to be impartial. Regardless of the character of the individual members of such tribunals, its composition alone creates the appearance, if not actual lack, of impartiality. It thus violates Article 7.1(d).

#### **FOR THE ABOVE REASONS, THE COMMISSION**

**declares** that there has been a violation of Article 7(a), (c) and (d) of the African Charter and recommends that the Government of Nigeria should free the complainants.

At the 17th session the Commission decided to bring the file to Nigeria for the planned mission in order to verify that the violations have been released.

#### **62/91 Committee for the Defense of Human Rights v. Nigeria, in respect of Ms. Jennifer Madike**

##### **Complaint:**

The case concerned an individual detained on charges of drugdealing. The complainant committee alleged that the detention was politically motivated. The Commission received information that the detainee was freed and subsequently inquired of the complainant if it wished to pursue the case.

##### **Finding:**

These inquiries went unanswered despite two reminders. The Commission therefore decided that the file be closed because of loss of contact with the complainant.

#### **64/92 Krischna Achutan (On behalf of Aleke Banda), 68/92 Amnesty International on behalf of Orton and Vera Chirwa 78/92 Amnesty International on behalf of Orton and Vera Chirwa v. Malawi**

#### **THE FACTS**

1. In communication no. 63/92 Krishna Achuthan appealed to the Commission on behalf of his father-in-law, Aleke Banda, a prominent political figure who at the time of the communication had been imprisoned for over 12 years without legal charge or trial. Mr. Achuthan had met with two successive heads of intelligence of Malawi who said there was no case pending against Mr. Banda, but that he was being held "at the pleasure of the head of state."
2. In communications nos. 68/92 and 78/92 Amnesty International petitioned the Commission on behalf of Orton and Vera Chirwa. Orton Chirwa had been a prominent political figure in Malawi before independence, but had been living in exile in Zambia with his wife since 1964 because of differences with Malawi's President Banda. In 1981, the Malawi security officials took them into custody and

they were subsequently sentenced to death for treason at a trial in the Southern Regional Traditional Court. They claimed at this trial that they had been abducted from Zambia. They were denied legal representation. The sentences were upheld by the national traditional Appeals Court, although the Appeals Court criticized many aspects of the conduct of the trial.

3. After international protest, the sentences were commuted to life imprisonment. The Chirwas were held in almost complete solitary confinement, given extremely poor food, inadequate medical care, shackled for long periods of time within their cells and prevented from seeing each other for years.
4. In its supplemental communication consisting of a report on Malawi for March-July 1992, Amnesty International described the arrests of many office workers in 1992 because of suspicions that the equipment used in their work, such as computers and fax machines, could be used to disseminate propaganda of the pro-democracy movement. The report also described extremely poor prison conditions, including overcrowding and torture consisting of beatings and electric shocks.
5. The communication also described the detention and intimidation of Roman Catholic bishops. Trade union leaders were imprisoned, and peacefully striking workers were shot and killed by the police. Police also raided student dormitories and arrested students who were beaten and tortured.

## **THE LAW**

6. Article 4 of the African Charter reads:

" ... Every human being shall be entitled to respect for his life ... "

Shootings by police officers are a violation of this right.

7. Article 5 of the African Charter provides as follows:

" ... All forms of ... torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

The conditions of overcrowding and acts of beating and torture that took place in prisons in Malawi contravened this article. Aspects of the treatment of Vera and Orton Chirwa such as excessive solitary confinement, shackling within a cell, extremely poor quality food and denial of access to adequate medical care, were also in contravention of this article.

8. Article 6 of the African Charter reads:



"Every individual shall have the right to liberty and to the security of his person. ... "

The massive and arbitrary arrests of office workers, trade unionists, Roman Catholic bishops and students violated this article. The arbitrary detention Mr. Aleke Banda suffered is likewise a violation of Article 6.

9. Mr. Banda was not allowed recourse to the national courts to challenge the violation of his fundamental right to liberty as guaranteed by Article 6 of the African Charter and the constitution of Malawi. Furthermore, Aleke Banda was detained indefinitely without trial. The Commission finds that Mr. Banda's imprisonment violated Article 7, paragraph 1(a) and (d) of the African Charter.
10. Vera and Orton Chirwa were tried before the Southern Region Traditional Court without being defended by a counsel. This constitutes a violation of Article 7, paragraph 1 (c) of the African Charter.
11. The Commission notes that Malawi has undergone important political change after the submission of the communications. Multiparty elections have been held, resulting in a new government. The Commission hopes that a new era of respect for the human rights of Malawi's citizens has begun.
12. Principles of international law stipulate, however, that a new government inherits the previous government's international obligations, including the responsibility for the previous government's mismanagement. The change of government in Malawi does not extinguish the present claim before the Commission. Although the present government of Malawi did not commit the human rights abuses complained of, it is responsible for the reparation of these abuses.

**FOR THESE REASONS, THE COMMISSION** holds that there has been a violation of Articles 4, 5, 6, and 7, paragraph 1, (a), (c) and (d) of the African Charter.

### **75/92 Katangese Peoples' Congress v. Zaire**

#### **THE FACTS**

1. The communication was submitted in 1992 by Mr. Gerard Moke, President of the Katangese Peoples' Congress requesting the African Commission on Human and Peoples' Rights:
  - To recognise the Katangese Peoples' Congress as a liberation movement entitled to support in the achievement of independence for Katanga.
  - To recognise the independence of Katanga.
  - To help secure the evacuation of Zaire from Katanga.

#### **THE LAW**

2. The claim is brought under Article 20(1) of the African Charter on Human Rights'. There are no allegations of specific breaches of other human rights apart from the claim of the denial of self-determination.
3. All peoples have a right to self-determination. There may however be controversy as to the definition of peoples and the content of the right. The issue in the case is not self-determination for all Zaireoise as a people but specifically for the Katangese. Whether The Katangese consist of one or more ethnic groups is, for this purpose immaterial and no evidence has been adduced to that effect.
4. The Commission believes that self-determination may be exercised in any of the following ways - independence, self-government, local government, federalism, confederalism, unitarism or any other form of relations that accords with the wishes of the people but fully cognisant of other recognised principles such as sovereignty and territorial integrity.
5. The Commission is obligated to uphold the sovereignty and territorial integrity of Zaire, a member of the OAU and a party to the African Charter on Human and Peoples' Rights.
6. In the absence of concrete evidence of violations of human rights to the point that the territorial integrity of Zaire should be called to question and in the absence of evidence that the people of Katanga are denied the right to participate in government as guaranteed by Article 13(1) of the African Charter, the Commission holds the view that Katanga is obliged to exercise a variant of self-determination that is compatible with the sovereignty and territorial integrity of Zaire.

**FOR THE ABOVE REASONS, THE COMMISSION**

**declares** that the case holds no evidence of violations of any rights under the African Charter. The request for independence for Katanga therefore has no merit under the African Charter on Human and Peoples' Rights.

**83/92, 88/93, 91/93 (Joined) Jean Yaovi Degli (au non du Caporal N. Bikagni), Union Interafricaine des Droits de l'Homme, Commission International de Juristes / Togo**

**Facts:**

The first communication, No. 83/92, concerns Corporal Nikabou Bikagni, who the communication alleges was arrested on 7 October 1992 in Lomé and who was subject to torture and maltreatment. Under this duress, he made a confession that he was planning a coup against the government of Togo.

The second communication, No. 88/93, consists of a report of a mission sent to Togo by the Union Interafricaine des Droits de l'Homme from 23 to 29 December 1992. This report includes information on the attempt on the life of opposition leader Jules Christ Olympio, the assassination of the driver of the Prime Minister in December 1992, extortion and killings in villages in the north of Togo, the shooting incident of 25 January 1993 which resulted in at least 14 deaths, and the shooting incident of 26 of January which resulted in at least 4 deaths. The communication also mentions the discovery of more than 15 bodies which were found, mutilated and bound, in the waters around Lomé.

The report also provides a general overview of the political and economic situation in Togo, including irregularities with respect to how elections are conducted.

The third communication, No. 91/93, alleges that on 30 January 1993 the Togolese military shot and killed 20 peaceful demonstrators in Lomé. This was related to a general breakdown of law and order which resulted in numerous violations of human rights by the security forces. Abuses by the security forces caused 40,000 Togolese to flee the country.

**Complaint:**

The complainants allege grave and massive violations of various rights protected by the African Charter.

**Finding:**

The Commission sent a delegation to Togo and was adduced that these acts were committed under a previous administration. The Commission is satisfied that the present administration has dealt with the issues satisfactorily.

### **86/93 M. S. Ceesay v. The Gambia**

#### **Facts:**

The complainant was a Corporal in the Gambia National Army and was on 14 June 1991 - according to the complainant -randomly selected as one of seven men to see the Commander in order to discuss problems of the Contingent. When the seven men had gathered they were immediately surrounded by armed personnel who attempted to arrest them. They managed to flee to the State House but were arrested, subsequently suspended and discharged allegedly because of state mutiny but without charge or trial.

According to the Attorney General Mr. Ceesay and others were marching in the streets protesting because of lack of payment. The protesters were disrupting the peace and were charged with mutiny. A Commission of Enquiry was set up to decide on the cases and the mutineers were eventually dismissed, the most inferior sanction available against mutiny.

#### **Complaint:**

The complainant asks the Commission to order re-instatement or to compel the Gambian authorities to issue the complainant with a certificate of discharge.

#### **Decision:**

The Government notified the Commission that the complainant had not had recourse to the local remedies. At its 16th session the Commission declared the communication inadmissible.

### **87/93 The Constitutional Rights Project (in respect of Zamani Lakwot and 6 Others) v. Nigeria**

#### **THE FACTS**

1. Communication 87/93 was brought on behalf of seven men - Zamani Lekwot, James Atomic Kude, Yohanna Karau Kibori, Marcus Mamman, Yahaya Duniya, Julius Sarki Zamman Dabo and Iliya Maza - sentenced to death under the Civil Disturbances (Special Tribunal) Decree No. 2 of 1987 from Nigeria. This decree does not provide for any judicial appeal against the decisions of the special tribunals and prohibits the courts from reviewing any aspect of the operation of the tribunal.

2. The communication also alleges that the accused and their counsel were constantly harassed and intimidated during the trial, ultimately forcing the withdrawal of the defense counsel. Despite the lack of defense, the tribunal condemned the accused to death for culpable homicide, unlawful assembly and breach of the peace.

## **ARGUMENT**

3. The communication argues that the prohibition on judicial review of the special tribunals and lack of judicial appeals for judgments of these tribunals violates the right to an appeal to competent national organs against acts violating fundamental rights, guaranteed by Article 7, paragraph 1(a) of the African Charter.
4. The communication complains that the conduct of the trials before these tribunals, which included harassment of defense counsel, and deprivation of defense counsel, violated the right to be defended by counsel of one's choice, guaranteed by Article 7, paragraph 1(c).
5. The communication finally complains that the practice of setting up special tribunals, composed of members of the armed forces and police in addition to judges, violates the right to be tried by an impartial tribunal guaranteed by Article 7, paragraph 1(d).

## **THE LAW**

### **Admissibility**

6. The case was declared admissible at the 14th Session of the Commission on the following grounds:
7. The case raises the question of whether the remedies available are of a nature that requires exhaustion.
8. The Act complained of in Communication No. 87/93 is The Civil Disturbances (Special Tribunal) Act, in which Part IV, Section 8 (1) provides:

"The validity of any decision, sentence, judgment, ... or order given or made, ... or any other thing whatsoever done under this Act shall not be inquired into in any court of law."

9. The Civil Disturbances Act empowers the Armed Forces Ruling Council to confirm the penalties of the Tribunal.

This power is a discretionary, extraordinary remedy of a non-judicial nature. The object of the remedy is to obtain a favour and not to vindicate a right. It would be improper to insist on the complainant seeking remedies from a source which does not operate impartially and have no obligation to decide according to legal principles. The remedy is neither adequate nor effective.

10. Therefore, the Commission is of the opinion that the remedy available is not of a nature that requires exhaustion according to Article 56, paragraph 5 of the African Charter.

### **The merits of the case**

11. The Civil Disturbances (Special Tribunal) Act, Part IV, Section 8(1) provides:

"The validity of any decision, sentence, judgment, ... or order given or made, ... or any other thing whatsoever done under this Act shall not be inquired into in any court of law."

12. A "decision, sentence, judgment...order given or made..or any other thing whatsoever done under" the Civil Disturbances Act may certainly constitute an "act violating fundamental rights" as described in Article 7.1(a) of the Charter. In this case, the fundamental rights in question are those to life and liberty provided for in Articles 4 and 6 of the African Charter. While punishments decreed as the culmination of a carefully conducted criminal procedure do not necessarily constitute violations of these rights, to foreclose any avenue of appeal to "competent national organs" in criminal cases bearing such penalties clearly violates Article 7.1(a) of the African Charter, and increases the risk that even severe violations may go unredressed.

13. The communication alleges that during the trials the defense counsel for the complainants was harassed and intimidated to the extent of being forced to withdraw from the proceedings. In spite of this forced withdrawal of counsel, the tribunal proceeded to give judgment in the matter, finally sentencing the accused to death. The Commission finds that defendants were deprived of their right to defense, including the right to be defended by counsel of their choice, violation of Article 7.1(c) as cited above.

14. The Civil Disturbance (Special Tribunal) Act, Part II, Section 2(2) says that the tribunal shall consist of one judge and four members of the armed forces. As such, the tribunal is composed of persons belonging largely to the executive branch of government, the same branch that passed the Civil Disturbance Act.

Article 7.1(d) of the African Charters requires the court or tribunal to be impartial. Regardless of the character of the individual members of such tribunals, its composition alone creates the appearance, if not actual lack, of impartiality. It thus violates Article 7.1(d).

### **FOR THE ABOVE REASONS, THE COMMISSION**

**declares** that there has been a violation of Article 7(a), (c) and (d) of the African Charter, and recommends that the Government of Nigeria should free the complainants."

At the 17th session the Commission decided to bring the file to Nigeria for a planned mission in order to make sure that the violations have been repaired.

## **90/93 Paul S. Haye v. The Gambia**

### **Facts:**

1. In November 1987, the complainant hired Edward Gomez, an attorney, to register a company for him. Complainant paid to Mr. Gomez a sum of D7150 in fees, but the company was never registered. In March 1990, complainant sued Mr. Gomez for the return of the money. Mr. Gomez filed a counter-claim, but before the suit could be heard the judge who had been scheduled to hear the case resigned. After inquiries to discover when the suit would be heard, complainant was told to await notice by the court.
2. On 2 October 1991, a mini-van belonging to the complainant was seized. He was informed that after failure to appear in court on 28 May 1991, a default judgment was entered in favour of Mr. Gomez, and the mini van was seized to satisfy the judgement. Complainant filed a motion for leave to appeal the judgment to the Gambia Court of Appeal on the grounds that he never received notification of the 28 May court date. This motion was heard by the same judge who made the original judgment, and was denied. Therefore the complainant alleges that he has no further domestic remedies available.

### **Argument**

3. Complainant alleged violation of his rights under Article 7 to have his cause heard. The Supreme Court judge had absolute discretion to disallow an appeal of his own judgment. Questions also arise over the adequacy of the procedure of service (notification of hearing date).

### **Decision**

4. At its 16th session the Commission declared the case inadmissible for non exhaustion of local remedies. The complainant by reason of his own default and/or negligence, did not seek to appeal to the Court of Appeal of The Gambia against the decision of the Supreme Court referring his application for leave to appeal to the Court of Appeal. Upon the complainant being notified of this decision he wrote back urging the Commission to review its decision on the same grounds he had advanced before. As no new grounds are raised or shown, the Commission finds no reason to disturb its previous decision which is accordingly re-affirmed.

**92/93 International Pen v. Soudan, (in respect of Kemal al-Jazouli)**

**The facts**

1. The communication concerns one Kemal al-Jazouli, who was held incommunicado without charge from March to June 1992. During this period he had no opportunity to challenge his detention in a court of law.

**Complaint**

2. The complaint alleges violation of Articles 6 and 7 of the African Charter.

**Decision**

3. The Commission is of the opinion that none of the information given whether taken individually or together can constitute exhaustion of local remedies. The victim was tried in June 1992 and the complaint was lodged with the Commission in March 1993. He had ample freedom to exhaust local remedies before he approached the Commission. The fact that the Government has in general terms denied the existence of incommunicado detentions in Sudan does not amount to saying that the case has been tried in Sudanese courts.
4. For these reasons, the African Commission on Human and Peoples' Rights declares the communication inadmissible for non-exhaustion of local remedies.

**101/93 Civil Liberties Organization in respect of the Nigerian Bar Association v. Nigeria**

**THE FACTS**

1. The communication is brought by the Civil Liberties Organization, a Nigerian non-governmental organization, in protest against the Legal Practitioners' Decree. This decree establishes a new governing body of the Nigerian Bar Association, namely the Body of Benchers. Of the 128 members of this body, only 31 are nominees of the Bar Association. The rest are nominees of the government.
2. The functions of the Body of Benchers are (1) the prescription of practising fees one tenth of which are payable every year to the Body and (2) the disciplining of legal practitioners.



3. The decree excludes recourse to the Courts and makes it an offence "to commence or maintain an action or any legal proceeding whatever relating to or connected with or arising from the exercise of any of the powers of the Body of Benchers". The decree is retrospective.

## **ARGUMENT**

4. The communication argues that the prohibition on litigation violates Article 7 of the African Charter.
5. The communication argues that the new governing body for the Nigerian Bar Association, established by governmental decree, violates Nigerian lawyers' freedom of association guaranteed by Article 10 of the African Charter.

## **THE LAW**

6. This communication was declared admissible at the 16th session.
7. The Legal Practitioners (Amendment) Decree 1993, Section 23 A, subsection 1, reads:

"No person shall commence or maintain an action or any legal proceeding whatsoever relating to, connected with or arising from -

- (a) the management of the affairs of the association; or
- (b) the exercise or preparation by the Body of Benchers for the exercise of the powers conferred upon it by this Act."

8. A decision must be taken as to whether the above mentioned decree constitutes a violation of the African Charter.
9. The Commission finds that the present case raises questions concerning Article 7, the right to fair trial, and Article 10, the right to freedom of association.
10. The above mentioned Legal Practitioners (Amendment) Decree 1993, Section 23 A, subsection 3 reads:

"A person who contravenes the subsection (1) of this section commits an offence and is liable on conviction to a fine of N 10,000 or to imprisonment for a term of one year or to both such fine and imprisonment."

The Decree is retrospective since it was issued 18 February 1993 but was deemed to come into force on 31 July 1992.

11. Article 6 of the African Charter reads:

"...No one may be deprived of his freedom, except for reasons and conditions previous laid down by law."

No retrospective law may deprive a person of his liberty. The wording of the decree therefore constitutes a violation of Article 6.

12. Article 7(2) of the African Charter reads:

"No one may be condemned for an act or omission which did not constitute a legally punishable offence for which no provision was made at the time it was committed. "

The Commission is of the opinion that the retrospective effect of the decree constitutes a violation of Article 7(2) of the African Charter.

13. Article 7(1) of the African Charter reads:

"Every individual shall have the right to have his cause heard. ..."

The powers of the Body of Benchers include financial and disciplinary matters. The prohibition on litigation against these powers infringes the right to appeal to national organs, and violates Article 7(1) of the Charter.

14. Article 10 of the African Charter reads:

"1. Every individual shall have the right to free association provided he abides by the law. ... "

Freedom of association is enunciated as an individual right and is first and foremost a duty for the State to abstain from interfering with the free formation of associations. There must always be a general capacity for citizens to join, without State interference, in associations in order to attain various ends.

15. In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom<sup>1</sup>. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards.

16. The Body of Benchers is dominated by representatives of the government and has wide discretionary powers. This interference with the free association of the Nigerian Bar Association is inconsistent with the preamble of the African Charter in

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<sup>1</sup> Resolution on the right to freedom of Association, adopted by the African Commission on Human and Peoples' Rights, at its 11th Ordinary Session.

conjunction with UN Basic Principles on the Independence of the Judiciary<sup>2</sup> and thereby constitutes a violation of Article 10 of the African Charter.

### **FOR THE ABOVE REASONS, THE COMMISSION**

holds that there has been a violation of Articles 6, 7, and 10 of the African Charter on Human and Peoples' Rights. The Decree should therefore be annulled.

**104/94, 109 - 126/94 Center for the Independence of Judges and Lawyers v. Algeria, and Others.**

### **THE FACTS**

1. The communication is in the form of a report published by the Center for the Independence of Judges and Lawyers of Geneva, Switzerland. It describes harassment and persecution of judges and lawyers in 53 different countries including 18 of the African countries party to the African Charter. The harassment and persecution described includes murder, torture, intimidation and threats of all kinds. The report describes special features of court systems, such as military courts and special tribunals.

### **COMPLAINT**

2. The communication does not specify which of the facts it contains it regards as violations. Neither does it specify any sought remedy.

### **THE LAW**

3. Article 56 of the African Charter reads:

"Communications ... shall be considered if they:

1. Indicate their authors even if the latter requests anonymity. ..."

4. Rule 114, section 3 of the Rules of Procedure of the African Commission on Human and Peoples' Rights reads:

" In order to decide on the admissibility of a communication ... the Commission shall ensure:

...

- (b) that the author alleges to be a victim of a violation, ..., that the communication is submitted in the name of an individual who is a victim (or individuals who are victims) who would be unable to submit a communication or to authorize it to be done; ..."

5. The reason for these provisions is that the Commission must receive communications with adequate information with a certain degree of specificity concerning the victims.

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<sup>2</sup> UN General Assembly Resolution no. 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

6. The present report submitted by the CIJL does not give specific places, dates, and times of alleged incidents sufficient to permit the Commission to intervene or investigate. In some cases, incidents are cited without giving the names of the aggrieved parties. There are numerous references to "anonymous" lawyers and judges. Thus, in this case the author is not an alleged victim, nor is the communication submitted in the name of a specific victim, nor does the complainant allege grave and massive violations. The information in the communication is insufficient to permit the Commission to take action.

**FOR THE ABOVE REASONS, THE AFRICAN COMMISSION**  
declares the communications inadmissible.

**127/94 Sana Dumbaya v. The Gambia**

**Facts:**

1. Mr. Dumbuya complains that he was working as a registry clerk for the Ministry for Local Government and Lands from January to July 1992. In July 1992 he was dismissed under unclear circumstances, allegedly for leaking official secrets.

**Decision**

2. The complainant has failed or neglected to respond to two requests by the Commission for information on whether all local remedies have been exhausted. In the circumstances the Commission during its 16th session declared the communication inadmissible on account of lack of exhaustion of local remedies.

**136/94 William A. Courson v. Zimbabwe**

**Facts**

1. The communication concerns the legal status of homosexuals in Zimbabwe. Domestic law of Zimbabwe criminalizes sexual contacts between consenting adult homosexual men in private. According to the complainant, this prohibition is currently being enforced in Zimbabwe, encouraged by statements against homosexuals by the President and by the Minister of Home Affairs.
2. The communication complains of violations of the African Charter on Human and Peoples' Rights, namely Articles 1-6, 8-11, 16, 20, 22 and 24. The complainant points to Article 60 of the Charter which states that the Commission shall draw inspiration from international law on human and peoples rights and as Annex B to the communication the complainant has attached the views adopted by the Human Rights Committee in the case of Mr. Toonen vs. Australia. In this case the Committee was of the view that the criminalization of homosexuality in Tasmania was unreasonable and interfered arbitrarily with Mr. Toonen's right to privacy under CPR Article 17, paragraph 1.

**Finding**

3. The communication was withdrawn by the author. The Commission saw no need to continue with it.

### **138/94 International PEN on behalf of Senn and Sangare v. Côte d'Ivoire**

#### **Facts**

1. International Pen submitted the communication on behalf of two journalists - Senn and Sangare - who published an article that had appeared in Jeune Afrique about President Bédié. They were charged, imprisoned and fined while the appeal was pending. They were again detained, charged and imprisoned but subsequently released in an amnesty. In a subsequent letter to the Commission, the author insisted that the journalists were detained in violation of their rights.

#### **Finding:**

2. After reviewing the situation, the Commission held the view that if the author required any remedies, it should first resort to the Ivory Coast, the amnesty having extirpated the legal effects of detention and from which the Commission could take note of.

### **142/94 Muthuthurin Njoka v. Kenya (previously 56/91)**

#### **Facts:**

1. The communication was submitted by Muthuthirin Njoka, who alleges that he was illegally admitted to Mathare Mental Hospital through Police duress and pressure. He alleges the wrong implementation of the Police Act 1961 and Mental Treatment Act 1949, which were both enacted by the colonial government. He also alleges wrongful detention and torture, the wrongful imprisonment of his sons and other members of his family, the harassment of the members of his family and the confiscation of family property.
2. The communication was originally submitted in 1991 as designated No. 56/91. On 12 October 1993, the Commission decided that the communication was inadmissible because Kenya was not party to the African Charter on Human and Peoples' Rights at the time it was submitted.
3. Mr. Njoka was accordingly intimated but was also informed that he could re-submit his communication since Kenya had subsequently ratified the Charter. This, he did.

#### **Applicable Law**

4. The complainant alleges violations of his rights under Articles 5, 6, 7 and 21 of the Charter.

## **Recommendation**

6. The cause of the complaint arose at a time when Kenya was not a party to the Charter. There is no evidence of a continuing damage in breach of the Charter.
7. The communication is incoherent in several respects:
  - a) The author alleges in a letter of 14 June 1994 to the Registrar of the High Court of Kenya that his suits had been pending in Court for 9 years. One was against Kenya claiming the sum of 7.5 b. Kenyan shillings for the wrongful implementation of colonial statutes and another claiming 12.5 b. British shillings for wrongfully passing those legislations.
  - b) A letter of 20 March 1991 addressed to the World Health Organization is enclosed. The letter wants "the definition of mental capacity and the position of a living being".
  - c) A letter of 31 May 1993 addressed to the Secretary of the OAU requires the Organization "to intercept this matter and ... quash the sentences imposed on my sons and set them free".
8. The author is incoherent and his complaints are vague. The communication is inadmissible.

## **ANNEX V**

### **Resolutions adopted at the 16th Ordinary Session**

#### **Resolution on the Military**

The African Commission on Human and Peoples' Rights meeting at its 16<sup>th</sup> Ordinary Session held from 25 October to 3 November 1994, in Banjul, The Gambia;

**Recalling** the intervention in African States by the military during the past three decades, and the fact that only very few States have escaped this phenomenon,

**Affirming** that the best government is one elected by, and accountable to, the people,

**Aware** that the trend world-wide and in Africa in particular is to condemn military take-overs and the intervention by the military in politics,

**Recognising** that the forcible take-over of government by Army civilian or military group contravenes Articles 13(1) and 20(1) of the African Commission on Human and Peoples' Rights,

**Considering** that such interventions stultify political development and antagonise relations between national groups:

1. CALLS UPON African military regimes to respect fundamental rights.
2. REMINDS them that they are entrusted with the national armouries solely for the purpose of national defence and the maintenance of internal order under the direction of the legitimate authorities;
3. CALLS UPON incumbent military governments to handover political power to democratically elected governments without prolonging their incumbencies and unnecessarily delaying the return to democratic civilian rule;
4. ENCOURAGES states to relegate the era of military interventions in government to the past in the interest of the African image, progress and development, and for the creation of an environment in which Human Rights values may flourish.

## **Resolution on Nigeria**

The African Commission on Human and Peoples' Rights meeting at its 16<sup>th</sup> Ordinary Session held from 25 October to 3 November, 1994 in Banjul, The Gambia;

**Recalling** that Nigeria has ratified the African Charter on Human and Peoples' Rights,

**BELIEVES** that the restoration of democracy in Nigeria will be a positive step in African development,

**REGRETS** the annulment of the 12 June 1993 presidential election which was adjudged free and fair by national and international observers,

**CONDEMNS** the gross violations of Human Rights as evidenced in:

1. the exclusion of the African Charter on Human and Peoples' Rights from the operation of decrees adopted by the military regime;
2. the detention of pro-democracy activists and members of the press;
3. the exclusion of the jurisdiction of courts over decrees;
4. discarding of court judgements;
5. the promulgation of laws without proper procedure of penal laws with retroactive effect;
6. the closure of newspaper houses.

**CALLS UPON** the Nigerian military government to respect the right of free participation in government and the right to self-determination and hand over the government to duly elected representatives of the people without unnecessary delay;

**REAFFIRMS** the decision to send a delegation of Commission members to meet with the Nigeria Head of State, to express concern of the Commission about the gross violations of human rights and express the need for the Nigeria military government to urgently transfer power to a civilian government.



## **Resolution on Rwanda**

The African Commission on Human and Peoples' Rights meeting at its 16<sup>th</sup> Ordinary Session held from 25 October to 3 November, 1994 in Banjul, The Gambia;

**Considering** the appointment at the 15<sup>th</sup> Session of the Vice-Chairman of the African Commission as Special Rapporteur on extra-judicial executions,

**Considering** the report of the United Nations Special Rapporteur indicating that genocide and massive human rights and international humanitarian law violations have been committed in Rwanda,

**Considering** the preliminary report of the UN Experts' Committee on Rwanda and its findings corroborating those of the UN Special Rapporteur,

**Considering** the UN Security Council's decision to approve the establishment of an international tribunal on Rwanda,

**Considering** the pledge of the Government of Rwanda and the International Community as expressed in the Hague Declaration of 18<sup>th</sup> September, 1994 to try the authors of the atrocious crimes committed in Rwanda:

1. CONDEMNS the inhuman and heinous crimes committed in Rwanda during recent conflict;
2. EXPRESSES its support for the establishment of an international tribunal by the UN to try those responsible for the crimes;
3. CALLS FOR the convening by the OAU over the next few months in collaboration with African and international NGOs, a meeting of African and international experts to study long-term solutions to the problem of impunity in Africa with special reference to the case of Rwanda, and to formulate appropriate recommendations;
4. CALLS ON the OAU to explore ways and means of encouraging African jurists to participate in the process of reconstruction of the judicial machinery in Rwanda;
5. URGES the Government of Rwanda to prevent the perpetration of acts of reprisals and vengeance by the rapid establishment of a new police force and a local administration respectful of human rights and composed of members of all ethnic groups of Rwanda.
6. EXHORTS the Government of Rwanda to ensure the rapid deployment of national and international human rights monitors as well as the strengthening of the interceding peace-keeping forces throughout Rwanda.
7. URGES international institutions and NGOs in general and African NGOs in particular to contribute to the effort of International solidarity and assist in the

rapid reconstruction of Rwanda through the provision of technical and financial assistance especially by facilitating the resumption of the activities of local Human Rights NGOs in Rwanda.

## **Resolution on The Gambia**

The African Commission on Human and Peoples' Rights meeting at its 16<sup>th</sup> Ordinary Session held from 25 October to 3 November, 1994 in Banjul, The Gambia;

**Recalling** the military take-over of the reins of government of the Gambia on the 22<sup>nd</sup> July 1994 which brought an end to an elected government and threatened the respect for Human Rights and the rule of law in that country.

**Reaffirming** the fundamental principle that all governments should be based on the consent of the people freely expressed by the and through their chosen representatives and that a military government is a clear violation of this fundamental principle of democracy,

**Drawing attention** to provision of articles 13 of the Charter which provides, *inter alia*, that "Every citizen shall have the right to freely participate in the government of his country, either directly or through chosen representatives in accordance with the provisions of the law",

**Convinced** that the introduction of military rule is a clear setback to the cause of democracy and democratic development in The Gambia and Africa generally:

1. REITERATES that the military coup in The Gambia is a flagrant and grave violation of the right of the Gambian people to freely choose their government;
2. REQUESTS the Armed Forces Provisional Ruling Council to transfer power to freely elected representatives of the people;
3. CALLS UPON the military authorities to ensure that:
  - (i) the Bill of Rights contained in the Gambian Constitution remains supreme over all other legislation emanating from the Ruling Council;
  - (ii) the dependence of the judiciary is respected;
  - (iii) during the transition period, the rule of law, as well as the recognised international standards of fair trial and treatment of persons in custody are observed;
  - (iv) all detainees should either be charged with the commission of offences or released forthwith and that meanwhile the rights of detainees to have access to their lawyers and members of their families are scrupulously respected.

## **Resolution on The Human Rights Situation in Africa**

The African Commission on Human and Peoples' Rights meeting at its 16<sup>th</sup> Ordinary Session held from 25 October to 3 November, 1994 in Banjul, The Gambia;

**Acknowledging** that the human rights situation in many African countries is characterised by the violations of economic, social, cultural, civil and political rights,

**Alarmed** by the possible resurgence of the illegal seizure of the reins of government in Africa,

**Expressing** concern over the persistent situation of refugees and internally displaced persons affecting the African Continent,

**Seriously concerned** with the continuous restrictions imposed on the right of freedom of expression by the arrest of journalists and the closure of newspapers in some African countries,

**Considering** that the persistent economic crisis in Africa has aggravated the human rights situation of vulnerable groups in African societies, in particular women and children,

**Also concerned** with the consequences of persistent wars in several African States, on the civilian population, which prevent the realisation of the right to development,

**Bearing in mind** its role under the African Charter on Human and Peoples' Rights, to ensure the protection of Human and Peoples' Rights:

1. CONDEMNS the planning or execution of *Coup d'Etats* and any attempt to seize power by undemocratic means;
2. CALLS UPON all African Government to ensure that elections and electoral processes are transparent and fair;
3. URGES all African countries to adopt the appropriate means to stop the phenomenon of refugees and internally displaced persons affecting the continent;
4. CONDEMNS all attempts at restricting the right to freedom of expression;
5. CALLS UPON all African Governments to adopt legislative and other measures to protect vulnerable groups of society, in particular women and children, against the consequences of the persistent economic crisis in Africa;
6. URGES all those parties engaged in war on the African continent, to abide by the provisions of International Humanitarian Law, particularly with regard to the protection of civilians and to undertake all efforts to restore peace.

## ANNEX VI

### Resolutions Adopted at the 17th Session

#### Resolution on Sudan

The African Commission on Human and Peoples' Rights meeting at its 17<sup>th</sup> Ordinary Session, 13 - 22 March, Lomé, Togo;

**Recalling** that Sudan is legally bound to comply with international human rights and international humanitarian law treaties it has ratified, including the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Slavery Convention, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, the Convention on the Rights of the Child and the four Geneva Conventions of 1949,

**Considering** the consistent reports from United Nations experts, non-governmental organisations and others of continuing gross violations of human rights committed by the Government of Sudan,

**Further considering** that such reports also document gross abuses committed by factions of the Sudan Peoples' Liberation Army (SPLA) and the South Sudan Independence Army (SSIA),

**Mindful** that the need for large scale humanitarian aid in parts of Sudan is principally a result of the continuing war and gross human rights abuses,

**Alarmed** by the large number of internally displaced persons and the continuing exodus of refugees, mainly from southern Sudan and the Nuba Mountain region:

1. EXPRESSED DEEP CONCERN at the continuing human rights abuses in Sudan;
2. CALLS on the government to take immediate steps to respect all human rights, including bringing law and practice into line with international human rights standards, carrying out prompt, impartial and independent investigations into reports of human rights violation and bringing to justice those responsible;
3. FURTHER CALLS on the Government of Sudan to give all detainees prompt and regular access to their family, lawyers and doctors;
4. CALLS on all parties to the armed conflict immediately to cease using military force to interfere with the delivery of humanitarian assistance to the civilian population and to allow such assistance to be delivered unhindered;

5. FURTHER CALLS on all factions of the SPLA and the SSIA to respect international humanitarian law, particularly Article 3 common to the four Geneva Conventions of 1949, including ending deliberate and arbitrary killings and the torture of detainees;
6. APPEALS to the Government of the Sudan to support negotiations for a settlement to the conflict and ensure that any agreement includes strong guarantees for the protection of human rights;
7. CALLS for human rights monitors to be placed in Sudan and other locations to facilitate the monitoring and assessment of the human rights situation throughout the country.

## **Resolution on Nigeria**

The African Commission on Human and Peoples' Rights meeting at its 17<sup>th</sup> Ordinary Session held from 13 to 22 March 1995, Lomé, Togo;

**Guided** by the African Charter on Human and Peoples' Rights and other international human rights instruments of which Nigeria is a signatory,

**Reaffirming** that all Member States including Nigeria have the duty to fulfil the obligations they have undertaken under the various international human rights instruments, particularly the African Charter on Human and Peoples' Rights,

**Recalling** the resolution passed by the African Commission at its 16<sup>th</sup> Session in Banjul in November 1994 which condemned the gross violations of Human Rights in Nigeria by the military government,

**Deeply Concerned** about the political, social, economic and general situation in Nigeria and the consequences that may result therefrom;

**Condemns** the continued gross and massive violations of human rights in Nigeria and particularly:

- (i) the arbitrary arrests and detention of human rights and pro-democracy activities, critics and opponents of military rule;
- (ii) severe restriction on the right to freedoms of expression, including the banning of several newspapers and news magazines;
- (iii) circumscribing the independence of the judiciary and setting up military tribunals lacking independence and due process to try persons suspected of being opposed to the military regimes;
- (iv) the abolition of *habeas corpus* with respect to political detainees;
- (v) restrictions on the right to leave the country;
- (vi) restrictions on the right to freedom of association;
- (vii) promulgation of decrees and laws ousting the application of the African Charter on Human and Peoples' Rights and preventing the Courts from intervening in cases of human rights violations.

**CALLS UPON** the military government in Nigeria to ensure respect for human rights and the rule of law, and in particular to release all political prisoners, reopen all closed media and respect freedom of the press, lift arbitrarily imposed travel restrictions, allow unfettered exercise of jurisdiction by the courts and remove all military tribunals from the judicial system.

URGES the military government in Nigeria to respect the rights of minorities and all religions and ensure full respect for the right of association.

AGAIN CALLS UPON the military government in Nigeria to take immediate steps to return Nigeria to democratic rule.



## **Resolution on The Gambia**

The African Commission on Human and Peoples' Rights meeting at its 17<sup>th</sup> Ordinary Session held from 13 to 22 March 1995, Lomé, Togo;

**Recalling** the condemnation of the 22 July 1994 *coup d'Etat* in The Gambia by the African Commission on Human and Peoples' Rights and the international community and the consequence of the military *coup d'Etat* on the principles of democracy and the rule of law,

**Taking note** of the continued presence of the military in power in The Gambia, despite calls for an immediate handing over to a civilian government, as expressed in the resolution on The Gambia by the ACHPR during its 16<sup>th</sup> Ordinary Session held in Banjul in October 1994,

**Taking note** with great concern that there are allegations of serious violations of Human Rights in the period of military rule:

1. NOTES the reduction of the timetable of transition to civilian rule by the Armed Forces Provisional Ruling Council from 4 to 2 years and therefore recommends strongly that the international Donor Communities lift the economic sanctions imposed on The Gambia;
2. INSISTS on the need for an independent judiciary and due process of law in The Gambia under all circumstances;
3. RENEWS its demands on the AFPRC to accelerate the process of transition to constitutional rule and to abolish all decrees that infringe the freedom of The Gambia people individually and collectively, including the freedom of expression, the press, and the right of association and assembly.
4. CALLS UPON the AFPRC to set up an independent commission of inquiry to investigate all allegations of violation of Human Rights.

## **Resolution on Anti-Personnel Mines**

The African Commission on Human and Peoples' Rights meeting at its 17<sup>th</sup> Ordinary Session held from 13 to 22 March 1995, Lomé, Togo;

**Recalling** the 1980 United Nations Convention on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects,

**Considering** Resolution CM/Res. 1726 (LX) adopted at the sixtieth session of the OAU Council of Ministers in Tunis (6-11) June 1994), calling upon Member States to ratify the above Convention and considering the holding of its next Review Conference in Vienna from 25 September to 13 October 1995,

**Noting** with regret the extremely limited number of African States Parties to this Convention,

**Considering** the significant ravages caused by the indiscriminate use of anti-personnel mines, particularly in Africa where more than 30 million mines are scattered,

**Noting** with concern the consequences of the proliferation of mines in African countries, particularly the failure of efforts of rehabilitation in the affected areas and of reconstruction, in countries which emerged from wars,

**Considering** that this phenomenon constitutes a flagrant violation of the provisions of the African Charter, and more specifically, of its Article 4,

**Further considering** that one of the most adequate means to combat this calamity would be the extension of the 1980 United Nations Convention on situations of internal conflicts and, the adoption of effective provisions for the implementation of this Convention particularly aiming at the prohibition of restrictions on the use of mines;

**Recognising** the importance of the NGOs in highlighting public awareness and the need to strengthen their capacity in assisting mines victims:

1. ENCOURAGES African States to ratify, within the shortest possible time, the 1980 United Nations Convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects;
2. URGENTLY REQUESTS African States to participate in large numbers in the review conference to press for the introduction of a clause on the prohibition or restriction of the use of mines in that Convention;
3. RECOMMENDS that concrete and effective steps be urgently taken to prohibit the manufacture of anti-personnel mines and to ensure that existing stocks are

destroyed and an international control mechanism is set up;

4. APPEALS to the manufacturers of anti-personnel mines so that they may be conscious of the dangers and destruction caused by the use of their products;
5. REQUESTS that the provisions of the above Convention be extended to situations of internal conflicts;
6. CALLS UPON Member States to closely associate the NGOs with the implementation of the present resolution, and particularly with the conception and execution of consciousness raising and mine victims rehabilitation programmes.

## **Resolution on Prisons in Africa**

The African Commission on Human and Peoples' Rights meeting at its 17<sup>th</sup> Ordinary Session held from 13 to 22 March 1995, Lomé, Togo;

**Guided** by the African Charter on Human and Peoples' Rights and, in particular, Article 45 of the Charter which defines the mandate of the Commission,

**Considering** that the rights established and guaranteed under the African Charter on Human and Peoples' Rights extend to all categories of persons including prisoners, detainees and other persons deprived of their liberty,

**Considering** also the leading role played by African States in the establishment of international norms and standards for the protection of human rights of prisoners including the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Standard Minimum Rules for the Treatment of Prisoners, among others, and that an overwhelming majority of the States Parties to the African Charter on Human and Peoples' Rights subscribe to the principles and rules contained in these international norms and standards,

**Aware of** Resolution 1984/87 of the United Nations Economic and Social Council which requests States to "inform the Secretary-General of the United Nations every five years of the progress made with the application of the Standard Minimum Rules for the Treatment of Prisoners and of the factors and difficulties, if any, affecting their implementation",

**Concerned** that the conditions of prisons and prisoners in many African countries are afflicted by severe inadequacies including high congestion, poor physical health and sanitary conditions; inadequate recreational, vocational and rehabilitation programmes, restricted contact with the outside world, large percentages of persons awaiting trial, among others,

**Conscious** that States assume responsibilities to look after the welfare of persons who have been deprived for their liberty including prisoners and detainees,

**Mindful** of the obligation of the States Parties to the African Charter on Human and Peoples' Rights to improve prison conditions and protect the human rights of prisoners, detainees and the persons deprived of their liberty in Africa and efforts undertaken;

HEREBY:

1. RESOLVES THAT prison conditions in many African countries do not conform with the articles of the African Charter on Human and Peoples' Rights and to the international norms and standards for the protection of the human rights of prisoners including the International Covenant on Civil and Political Rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners, among others;
2. URGES States parties of the African Charter on Human and Peoples' Rights to include in the reports submitted to the Commission under Article 62 of the Charter information on human rights affecting the human rights of prisoners;

CALLS UPON States Parties to the African Charter on Human and Peoples' Rights to comply with Resolution 1984/877 of the United Nations Economic and Social Council to submit periodic reports to the Secretary-General of the United Nations in compliance with the Standard Minimum Rules for the Treatment of Prisoners.



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# Chapter Eight Eighth Annual Activity Report of the African Commission 1994 - 1995

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